

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

295M0439

HOUSE BILL NO. 1150

Introduced by: Representatives O'Brien, Cutler, Gillespie, Haley, Hargens, Haverly, Hunhoff, Jensen, Murschel, Nelson, Rausch, Rave, Roberts, and Tidemann and Senators Bogue, Abdallah, Dempster, Duenwald, Hansen (Tom), Knudson, Moore, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to controlled drugs and
2 substances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any reference in this chapter to the weight of any controlled drug or substance includes the
7 weight of any cutting or mixing agent.

8 Section 2. That § 22-42-2 be amended to read as follows:

9 22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may
10 manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent
11 to manufacture, distribute, or dispense, a substance listed in Schedules I or II; create or distribute
12 a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a
13 counterfeit substance listed in Schedules I or II. A violation of this section is a ~~Class 4 felony~~
14 involving one pound or less of a substance listed in Schedule I or II is a Class 3 felony.



1 However, the distribution of one pound or less of a substance listed in Schedule I or II to a
2 minor is a Class 2 felony. A violation of this section involving more than one pound of a
3 substance listed in Schedule I or II is a Class 2 felony. However, the distribution of more than
4 one pound of a substance listed in Schedules I or II to a minor is a ~~Class 2~~ Class 1 felony. A
5 ~~first conviction under this section shall be punished by a mandatory sentence in the state~~
6 ~~penitentiary of at least one year, which sentence may not be suspended. Probation, suspended~~
7 ~~imposition of sentence, or suspended execution of sentence may not form the basis for reducing~~
8 ~~the mandatory time of incarceration required by this section. A second or subsequent conviction~~
9 ~~under this section shall be punished by a mandatory sentence in the state penitentiary of at least~~
10 ~~ten years, which sentence may not be suspended. Probation, suspended imposition of sentence,~~
11 ~~or suspended execution of sentence may not form the basis for reducing the mandatory time of~~
12 ~~incarceration required by this section. However, a first conviction for distribution to a minor~~
13 ~~under this section shall be punished by a mandatory sentence in the state penitentiary of at least~~
14 ~~five years, which sentence may not be suspended. Probation, suspended imposition of sentence,~~
15 ~~or suspended execution of sentence may not form the basis for reducing the mandatory time of~~
16 ~~incarceration required by this section. A second or subsequent conviction for distribution to a~~
17 ~~minor under this section shall be punished by a mandatory sentence in the state penitentiary of~~
18 ~~at least fifteen years, which sentence may not be suspended. Probation, suspended imposition~~
19 ~~of sentence, or suspended execution of sentence, may not form the basis for reducing the~~
20 ~~mandatory time of incarceration required by this section. A civil penalty may be imposed, in In~~
21 ~~addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars,~~
22 ~~may be imposed upon a conviction of a violation of this section ~~not to exceed ten thousand~~~~
23 ~~dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is~~
24 ~~the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a~~

1 ~~finding of guilt by a jury or court.~~

2 Section 3. That § 22-42-2.3 be repealed.

3 ~~—22-42-2.3. The sentencing court may impose a sentence other than that which is required by~~
4 ~~§ 22-42-2 if the court finds that mitigating circumstances exist which require a departure from~~
5 ~~the mandatory sentence imposed by § 22-42-2. The court's finding of mitigating circumstances~~
6 ~~allowed by this section and the factual basis relied upon by the court shall be in writing.~~

7 Section 4. That § 22-42-3 be amended to read as follows:

8 22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may
9 manufacture, distribute, or dispense a substance listed in Schedule III; possess with intent to
10 manufacture, distribute, or dispense, a substance listed in Schedule III; create or distribute a
11 counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit
12 substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the
13 distribution of a substance listed in Schedule III to a minor is a ~~Class 3~~ Class 4 felony. ~~A first~~
14 ~~conviction under this section shall be punished by a mandatory sentence in the state penitentiary~~
15 ~~or county jail of at least thirty days, which sentence may not be suspended. A second or~~
16 ~~subsequent conviction under this section shall be punished by a mandatory penitentiary or~~
17 ~~county jail sentence of at least one year, which sentence may not be suspended. However, a first~~
18 ~~conviction for distribution to a minor under this section shall be punished by a mandatory~~
19 ~~sentence in the state penitentiary or county jail of at least ninety days, which sentence may not~~
20 ~~be suspended. A second or subsequent conviction for distribution to a minor under this section~~
21 ~~shall be punished by a mandatory sentence in the state penitentiary of at least two years, which~~
22 ~~sentence may not be suspended. A civil penalty may be imposed, in In addition to any criminal~~
23 ~~penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a~~
24 ~~conviction of a violation of this section not to exceed ten thousand dollars.~~

Section 5. That § 22-42-4 be amended to read as follows:

22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedule IV; possess with intent to manufacture, distribute, or dispense, a substance listed in Schedule IV; create or distribute a counterfeit substance listed in Schedule IV; or possess with intent to distribute a counterfeit substance listed in Schedule IV. A violation of this section is a ~~Class 6~~ Class 5 felony. However, the distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. ~~A first conviction under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory penitentiary or county jail sentence of at least one year, which sentence may not be suspended. A civil penalty may be imposed, in~~ In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a conviction of a violation of this section not to exceed ten thousand dollars. Notwithstanding any other provision of this section, a violation of this section with respect to distribution of Flunitrazepam to a minor is a Class 4 felony, but in all other cases under this section is a Class 5 felony.

Section 6. That § 22-42-5 be amended to read as follows:

22-42-5. No person may knowingly possess a controlled drug or substance listed in Schedule I or II unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section ~~is a Class 4 felony involving less than one gram is a Class 6 felony. A violation of this section involving not less than one gram and not more than one pound is a Class 4 felony. A violation of this section involving more than one pound is a Class 3 felony.~~

Section 7. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

No person may knowingly possess a controlled drug or substance listed in Schedule III or IV unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section is a Class 6 felony.

Section 8. That § 22-42-6 be amended to read as follows:

22-42-6. No person may knowingly possess marijuana. It is a ~~Class 1~~ Class 2 misdemeanor to possess ~~two ounces~~ less than two grams of marijuana ~~or less~~. It is a ~~Class 6 felony~~ Class 1 misdemeanor to possess ~~more than two ounces~~ two grams of marijuana but less than ~~one-half pound~~ two ounces of marijuana. It is a ~~Class 5~~ Class 6 felony to possess ~~one-half pound~~ two ounces but less than one pound of marijuana. It is a ~~Class 4~~ Class 5 felony to possess one to ten pounds of marijuana. It is a ~~Class 3~~ Class 4 felony to possess more than ten pounds of marijuana. ~~A~~ In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed, ~~in addition to any criminal penalty,~~ upon a conviction of a felony violation of this section ~~not to exceed ten thousand dollars~~.

Section 9. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of ~~one ounce~~ two ounces or less of marijuana is a Class 6 felony. However, the distribution of two ounces or less of marijuana to a minor for consideration is a Class 5 felony. The distribution, or possession with intent to distribute, of more than ~~one ounce but less than one-half pound~~ two ounces but less than one pound of marijuana is a Class 5 felony. However, the distribution of more than two ounces but less than

1 one pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with
2 intent to distribute, of ~~one-half pound but less than one pound~~ one pound to ten pounds,
3 inclusive, of marijuana is a Class 4 felony. However, the distribution of one pound to ten
4 pounds, inclusive, of marijuana to a minor is a Class 3 felony. The distribution, or possession
5 with intent to distribute, of ~~one pound or more~~ than ten pounds of marijuana is a Class 3 felony.
6 However, the distribution of ~~any amount~~ more than ten pounds of marijuana to a minor is a
7 ~~Class 4~~ Class 2 felony. ~~A first conviction of a felony under this section shall be punished by a~~
8 ~~mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence~~
9 ~~may not be suspended. A second or subsequent conviction of a felony under this section shall~~
10 ~~be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor~~
11 ~~under this section shall be punished by a mandatory sentence in county jail of not less than~~
12 ~~fifteen days, which sentence may not be suspended. A~~ In addition to any criminal penalty, a civil
13 penalty, not to exceed ten one hundred thousand dollars, may be imposed, in addition to any
14 ~~criminal penalty,~~ upon a conviction of a felony violation of this section.

15 Section 10. That § 22-42-10 be amended to read as follows:

16 22-42-10. Any person who knowingly keeps or maintains a place which is resorted to by
17 persons using controlled drugs and substances for the purpose of using such substances, or
18 which is used for the keeping or selling of such substances, is guilty of a Class 5 felony.

19 Section 11. That § 22-42-19 be amended to read as follows:

20 22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, or 22-42-4, or a
21 felony violation of § 22-42-7 is guilty of a Class 4 felony, if such activity has taken place:

22 (1) In, on, or within ~~one thousand~~ three hundred feet of real property comprising a public
23 or private elementary or secondary school or a playground; or

24 (2) In, on, or within ~~five~~ three hundred feet of real property comprising a public or

1 private youth center, public swimming pool, or video arcade facility; ~~is guilty of a~~
2 ~~Class 4 felony. The sentence imposed for a conviction under this section carries a~~
3 ~~minimum sentence of imprisonment in the state penitentiary of five years. Any~~
4 ~~sentence imposed under this section shall be consecutive to any other sentence~~
5 ~~imposed for the principal felony. The court may not place on probation, suspend the~~
6 ~~execution of the sentence, or suspend the imposition of the sentence of any person~~
7 ~~convicted of a violation of this section. However, the sentencing court may impose~~
8 ~~a sentence other than that specified in this section if the court finds that mitigating~~
9 ~~circumstances exist which require a departure from the mandatory sentence provided~~
10 ~~for in this section. The court's finding of mitigating circumstances allowed by this~~
11 ~~section and the factual basis relied upon by the court shall be in writing.~~

12 It is not a defense to the provisions of this section that the defendant did not know the
13 distance involved. It is not a defense to the provisions of this section that school was not in
14 session.

15 Section 12. That § 22-42A-4 be amended to read as follows:

16 22-42A-4. No person, knowing the drug related nature of the object, may, for consideration,
17 deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia,
18 knowing, or under circumstances where one reasonably should know, that it will be used to
19 plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,
20 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise
21 introduce into the human body a controlled substance or marijuana in violation of this chapter.
22 Any person who violates any provision of this section is guilty of a Class 6 felony.